

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 637 Impact Fees

SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, DiCeglie

TIED BILLS: **IDEN./SIM. BILLS:** SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 1 N, As CS	Moehrle	Miller
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Impact fees are amounts imposed by local governments to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. The impact fee ordinances enacted by a county, municipality, or special district must meet certain minimum statutory criteria. The calculation of the amount due must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction. The timing of collecting these fees must occur after issuance of the building permit. However, imposing various types of impact fees for different infrastructure needs currently is at the discretion of each local government.

The bill requires counties and municipalities that adopt, collect, or administer an impact fee, and special districts that adopt an impact fee, to calculate the fee based on the most recent and localized data collected within the last 36 months and exclude any cost that does not meet the definition of "infrastructure." The local government must segregate the revenues and expenditures of any impact fee that addresses the entity's infrastructure needs in a separate impact fee trust fund. New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance imposing a new or increased impact fee.

The bill makes impact fee credits assignable and transferable from one development or parcel to another within the same impact fee jurisdiction for the same type of public facility to which the fee applies. Local government must provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee.

The bill requires each county or municipality assessing impact fees to establish an Impact Fee Review Committee composed of seven full-time members and three alternate members. The Committee shall:

- Establish policy and methodology for determining impact fees on new developments;
- Review proposed impact fees on each new development before the fee becomes final;
- Submit recommendations to the county or city commission;
- The recommendations must be presented at the meeting at which the impact fee on the new development will be discussed and voted;
- Review all proposed expenditures of the impact fee after adoption by the local government to ensure that the fee is used for capital projects within the jurisdiction.

The bill is not expected to have a fiscal impact on state and may have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Impact Fees

Impact fees are amounts imposed by local governments¹ to fund local infrastructure required to provide for increased local service needs caused by new growth.² Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees must be limited to the actual costs.
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.³
- The local government may not require payment of the impact fee before the date of issuance of the building permit for the property that is subject to the fee.⁴
- The impact fee must be reasonably connected to, or have a rational nexus with the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.⁵
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.⁶
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.⁷
- The local government may not use revenues generated by the impact fee to pay existing debt or for the previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with the increased impact generated by the new residential or commercial construction.⁸

The types of impact fees and timing of collection after issuance of the building permit are within the discretion of the local government authorities choosing to impose the fees.⁹ The Courts have found the imposition of impact fees appropriate where the local government meets two fundamental requirements known as the dual rational nexus test, which requires impact fees to have a reasonable connection, or nexus, between the:

¹ See, e.g., *Crocker v. Diland Corp.*, 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

² S. 163.31801, the impact fee statute, uses “local government” inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. See s. 163.31801(4), F.S.

³ S. 163.31801(3), F.S.

⁴ S. 163.31801(3)(e), F.S.

⁵ S. 163.31801(3)(f), F.S.

⁶ S. 163.31801(3)(g), F.S.

⁷ S. 163.31801(3)(h), F.S.

⁸ S. 163.31801(3)(i), F.S.

⁹ Currently, in Florida there are 67 counties, 413 municipalities, 1,116 independent special districts, and 633 dependent special districts. See ch. 7, F.S.; The Local Government Formation Manual 2018-2020, Appx. B, <https://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2020&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual.pdf> (last visited Dec. 9, 2019); Florida Department of Economic Opportunity, *Special District Accountability Program- Official List of Special Districts Online*, specialdistrictreports.floridajobs.org/webreports/StateTotals.aspx (last visited Dec. 16, 2019)..

- Need for additional capital facilities and the population growth generated by the project, and
- Expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project.¹⁰ Meeting this criterion requires the local government ordinance or resolution imposing the impact fee to earmark the funds collected to acquire the new capital facilities necessary to benefit the new residents.

In 2019, the Legislature codified the dual rational nexus test.¹¹ The amount of the impact fee must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction.¹²

Some local governments impose impact fees specifically for local school facilities.¹³ School districts have authority to impose ad valorem taxes within the district for school purposes¹⁴ but are not general purpose governments with home rule power¹⁵ and are not expressly authorized to impose impact fees.¹⁶ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.¹⁷ The ordinances creating the impact fee also require the funds be used only for education capital improvement projects.¹⁸ The credit imposed for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.¹⁹

Local governments may not require payment of impact fees prior to the issuance of a development or building permit.²⁰ In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.²¹ A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.²²

A local government applying the concurrency requirement to transportation facilities must comply with the statutory requirements in order to achieve and maintain the level of service standard adopted in the comprehensive plan.²³ A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.²⁴

Local governments may also apply concurrency to public education facilities.²⁵ With certain exceptions, when establishing such concurrency requirements the local government must enter into an interlocal

¹⁰ *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991) (citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), *rev. den.* 440 So. 2d 352 (Fla. 1983)).

¹¹ See Ch. 2019-106, Laws of Fla., codified as ss. 163.31801(f)-(g), F.S.

¹² *Id.*

¹³ See, e.g., Miami-Dade County Code of Ordinances ch. 33k, “Educational Facilities Impact Fee Ordinance,” Orange County Code of Ordinances ch. 23, art. V, “School Impact Fees.”

¹⁴ Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. See also *St. Johns County*, *supra* at 583 So. 2d 642.

¹⁵ See art. VIII, ss. 1(f)-(g), (2), Fla. Const.

¹⁶ S. 163.31801(2), F.S.

¹⁷ In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. Orange County Code of Ordinances, ss. 23-142.

¹⁸ See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

¹⁹ S. 163.3180(6)(h)2.b., F.S.

²⁰ S. 163.31801(3)(e), F.S.

²¹ S. 553.79, F.S.

²² S. 163.3164(16), F.S.

²³ S. 163.3180(5), F.S.

²⁴ S. 163.3180(5)(i), F.S.

²⁵ S. 163.3180(6)(a), F.S.

agreement with the school district.²⁶ The interlocal agreement may authorize a contribution of land, construction, expansion, or payment for land acquisition, construction or expansion of a public school, or construction of a charter school, as proportionate-share mitigation. If so, the local government must credit such contribution towards any other impact fee or exaction on a dollar-for-dollar basis at fair market value.²⁷ The credit for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.²⁸

Effect of the Bill

Impact Fee Formula

The bill requires counties and municipalities that adopt, collect, or administer an impact fee, and special districts that adopt an impact fee, to require the calculation of the impact fee be based on the most recent and localized data collected within the last 36 months and exclude any cost that does not meet the definition of “infrastructure.” The term “infrastructure” as defined in the bill means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years; any related land acquisition, land improvement, design, engineering, and permitting costs; and all other professional and related costs required to bring the public facilities into service.²⁹ The term “public facilities” has the same definition as provided in Florida Statutes.³⁰ The cost per student station established in school impact fee calculations may not exceed the statutory total maximum cost per student established in statute.³¹ The entity must segregate the revenues and expenditures of any impact fee that addresses the local governmental entity’s infrastructure needs in a separate impact fee trust fund.

Collection of Impact Fees

New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.

Financial Statement Audits

Audits of financial statements required by statute³² and filed with the Auditor General must include an affidavit signed by the chief financial officer of the local government or school board stating that the reporting entity complied with the requirements of the impact fee statute. The bill requires this affidavit also to confirm the reporting entity complied with the spending period provision in the local ordinance.

²⁶ Ss. 163.3177(1) and 163.3180(6)(i), F.S.

²⁷ S. 163.3180(6)(h)2.b., F.S.

²⁸ S. 163.3180(6)(h)2.b., F.S.

²⁹ The term “infrastructure” as defined in the bill appears to have the same definition as provided in s. 212.055(2)(d)(1), F.S.

³⁰ The term “public facilities” means facilities defined in s. 163.3164(39), F.S. (major capital improvements, including transportation, sanitary, sewer, solid waste, drainage, potable water, education, parks and recreational facilities), s. 163.3221(13), F.S. (major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities), or s. 189.012(5), F.S. (major capital improvements, including, but not limited to, transportation facilities, sanitary sewer facilities, solid waste facilities, water management and control facilities, potable water facilities, alternative water systems, educational facilities, parks and recreational facilities, health systems and facilities, and except for spoil disposal by those ports listed in s. 311.09(1), spoil disposal sites for maintenance dredging in waters of the state).

³¹ Currently, the total maximum costs per student are: elementary schools: \$17,952; middle schools: \$19,386, high schools: \$25,181. See s. 1013.64(6), F.S.

Impact Fee Credits

The bill provides that impact fee credits are assignable and transferable at any time after establishment from one development or parcel to another within the same impact fee jurisdiction for the same type of public facility for which the impact fee is applicable. The bill requires local governments to provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee. Contributions relating to the transportation system shall be creditable against the combined total of all impact fees and exactions charged for mobility.

Impact Fee Review Committee

The bill requires each county or municipality assessing impact fees to establish an impact fee review committee. The committee is composed of the following members appointed by the county or city commission:

- Two members employed by the local government;
- Two members representing the business community;
- Two members who are local residential contractors;
- One at-large member.

The county or city commission shall appoint three alternate members, consisting of one representative from each of the categories described above, who shall serve in the absence of their respective member.

Committee members must adhere to the following requirements:

- Be a qualified elector of the county for at least two years before their appointment;
- Serve at the pleasure of the local government and shall serve until replaced;
- The Committee meeting must be duly noticed;
- A quorum must be present (alternate members count toward the quorum when a regular member is absent);
- A member who fails to attend three consecutive meetings, or fails to attend two-thirds of the meetings within a calendar year, automatically forfeits the appointment and the county or city commissioners shall promptly fill the vacancy; and
- Committee members serve without compensation.

The Committee shall meet as needed to:

- Establish policy and methodology for determining impact fees on new developments;
- Review the proposed impact fee on each new development before the fee becomes final;
- Submit their recommendations to the county commission or city commission, as applicable;
- The recommendations must be presented at the meeting when the impact fee on the new development will be discussed and voted upon; and
- After each impact fee is adopted by the local government, review all proposed expenditures of that impact fee to ensure the fee is used for capital projects within the jurisdiction.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.31801, F.S., revising conditions that must be satisfied before enacting impact fees, providing timeframes for the collection of impact fees, amending the requirements for reporting impact fees, amending the conditions under which impact fees are assignable and transferable, providing definitions, and requiring certain counties and municipalities to establish impact fee review committees.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an impact on local government expenditures for staffing the Impact Fee Review Committee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Revises the impact fee calculation to be based on localized data calculated within the last 36 months;
- Removes language relating to Capital Asset under Generally Accepted Accounting Principles (GAAP);
- Removes the requirement that local governments prepare and post an annual financial report for each impact fee trust fund;
- Provides a definition of “infrastructure” for the purposes of impact fees;
- Requires local governments to provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee;
- Requires contributions relating to the transportation system be creditable against the combined total of all impact fees and exactions charged for mobility;
- Removes the requirement that the impact fee review committee hire an impact fee consultant; and
- Requires the committee rather than the impact fee consultant submit recommendations to the governing body of the local government.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.